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THIRD COMMITTEE

FEDERAL REPUBLIC OF GERMANY

Draft articles

ENFORCEMENT OF REGULATIONS CONCERNING THE PROTECTION
OF THE MARINE ENVIRONMENT AGAINST VESSEL-SOURCE
POLLUTION

Article I

1. States shall ensure that ships flying their flag comply with regulations established in accordance with this Convention and shall issue for these ships certificates required or provided for in such regulations. They shall deny the right to fly their flag to ships which do not comply with such regulations.
2. A certificate issued by a State for a ship flying its flag in accordance with this Convention shall be accepted by other States and regarded for all purposes covered by this Convention as having the same validity as a certificate issued by them.
3. If a State has issued a certificate for a ship flying its flag which does not comply with the requirements of the regulations and such ship causes pollution of the marine environment, the issuing State shall be internationally responsible for damage to other States and their nationals resulting from the pollution incident and shall pay compensation accordingly, unless the pollution incident was not due to the failure to comply with the requirements.

Article II

1. A ship required to carry a certificate is subject, while in the ports, off-shore terminals or internal waters of a Contracting State, to inspection by the authorities of that State. Any such inspection shall be limited to verifying that there is on board a valid certificate, unless there are clear grounds for believing that the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate.
2. If there are reasonable grounds for believing that the ship has violated discharge regulations established in accordance with this Convention, such State may also inspect the ship in order to ascertain whether it has violated such regulations.

English

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3. If the ship does not carry a valid certificate, or the condition of the ship or its equipment does not correspond substantially with the particulars of that certificate, or the ship has violated discharge regulations on the high seas, the inspecting State shall take appropriate action, and to the competent international organization. If the inspection indicates that the ship has violated discharge regulations within the territorial sea or internal waters of the inspecting State, the authorities of that State may institute judicial or administrative proceedings according to its national law.

Article III

1. If a ship does not carry a valid certificate as required by the regulations established in accordance with this Convention, States may deny such ship entry to their ports or off-shore terminals, or passage through their territorial sea. If there are reasonable grounds for believing that a ship does not carry a valid certificate and if, while in the territorial sea of a coastal State, it does not furnish information at the request of that State, as required under the regulations, the ship shall be deemed not to carry a valid certificate.

2. If there are reasonable grounds for believing that a ship in the territorial sea or internal waters of a coastal State has violated discharge regulations established in accordance with this Convention, the coastal State may, if necessary in order to ascertain whether the ship has violated the regulations, order a foreign merchant ship to stop and board it, and may take action, pursuant to article II, paragraph (3), against such ship.

Article IV

1. If substantial pollution, which may reasonably be expected to result in major harmful consequences to the marine environment, has occurred on the high seas in the vicinity of the territorial seas of coastal States, and if there are reasonable grounds for believing that a foreign merchant ship encountered near the site of the pollution incident has violated discharge regulations established in accordance with this Convention, such States may, if necessary in order to ascertain whether the ship has violated the regulations, order the ship to stop and board it.

2. If the inspection indicates that the ship has violated discharge regulations, a report shall be forwarded to the flag State, which shall take appropriate action, and to the competent international organization.

Article V

1. All possible efforts shall be made to ensure that a ship is not unduly detained or delayed. For this purpose States shall, inter alia, co-operate in the development and implementation of regulations and procedures to render unnecessary the stoppage or boarding, as provided for in the above articles, of a ship proceeding en route.

2. Measures taken pursuant to the above articles must not endanger ships, interfere with navigation or other legitimate uses of the sea, or create hazards to the marine environment. Ships inspected on the high seas or in innocent passage through the territorial sea must not be diverted, taken into port or arrested. If a State is entitled to institute judicial or administrative proceedings against a foreign ship, such ship may avoid arrest by bonding.
3. If a State, pursuant to article III, denies a foreign ship entry to its ports or off-shore terminals or passage through its territorial sea, or takes any action against such ship on account of a violation of discharge regulations, the State shall immediately inform the consul or diplomatic representative of the flag State.
4. If a ship is unduly detained or delayed, it shall be entitled to compensation for any loss or damage suffered.
5. Measures taken pursuant to the above articles may discriminate neither against nor among foreign ships. Regarding ships of States which are not Parties to this Convention, Contracting States shall apply the provisions of this Convention, in accordance with international law, in such a manner as to ensure that such ships are not accorded more favourable treatment.